

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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TRUSTEES OF THE EMPIRE STATE  
CARPENTERS ANNUITY,  
APPRENTICESHIP, LABOR MANAGEMENT  
COOPERATION, PENSION and WELFARE  
FUNDS,

**DECISION AND ORDER**

13-cv-0044 (ADS)(ARL)

Plaintiffs,

-against-

BLUERIDGE CONTRACTING, INC.,

Defendant.

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**APPEARANCES:**

**Virginia & Ambinder LLP**

*Attorneys for the Plaintiff*

14th Floor - Suite 1403

New York, NY 10006

By: Charles R. Virginia, Esq.  
Richard B. Epstein, Esq, Of counsel

**NO APPEARANCE:**

*Blueridge Contracting, Inc.*

**SPATT, District Judge.**

The Plaintiffs commenced this action on or about January 3, 2013, asserting claims for damages pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1132, and Section 301 of the Labor Management Relations Act of 1948 (“LMRA”), 29 U.S.C. § 185; and Section 9 of the United States Arbitration Act, 9 U.S.C. § 9, seeking to confirm and enforce an arbitration award. The Clerk of the Court having noted the default of the Defendant Blueridge Contracting, Inc. on March 25, 2013, and the Plaintiffs having moved for a default judgment against the Defendant on April 10, 2013, the

Court referred this matter to United States Magistrate Judge Arlene R. Lindsay for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorney's fees and costs. On February 5, 2014, Judge Lindsay issued a thorough Report recommending "that a default judgment be entered against the defendant, the arbitration award in the amount of \$7,131.52 be confirmed, and the plaintiffs be awarded an additional \$97.44 in interest and \$2,047.50 in attorneys' fees and costs, for a total award of \$9,276.46 . . . [and] that the defendant be directed to make available its books and records for an audit for the period of September 2010 to October 22, 2012." To date, no objection has been filed to Judge Lindsay's Report and Recommendation.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Lindsay's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Lindsay's Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

**ORDERED**, that Judge Lindsay's Report and Recommendation is adopted in its entirety. The Court grants the Plaintiffs' motion for a default judgment against the Defendant. The Clerk of the Court is directed to enter judgment in favor of the Plaintiffs in the total amount of \$9,276.46, including \$7,131.52 for the underlying arbitration award; \$97.44 in interest; and

\$2,047.50 in attorneys' fees and costs. In addition, the Court directs the Defendant to permit the Plaintiffs to conduct an audit of the Defendant's books and records for the period of September 2010 to October 22, 2012. The audit must be completed within thirty (30) days after notice of entry of judgment; and it is further

**ORDERED**, that the Clerk of the Court is directed to close the case.

**SO ORDERED.**

Dated: Central Islip, New York  
February 27, 2014

Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge